

Editor's note: Reconsideration denied by order dated Aug. 13, 1975

DWIGHT BROOKS

IBLA 75-190

Decided April 25, 1975

Appeal from a decision by Administrative Law Judge R. M. Steiner prohibiting placer mining on the Sweet Potato Placer mining claim (CA-838).

Reversed.

1. Administrative Procedure: Hearings -- Hearings -- Mining Claims:
Hearings -- Mining Claims: Special Acts -- Mining Claims Rights
Restoration Act -- Rules

Where at a hearing held pursuant to section 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim, the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

APPEARANCES: Dwight Brooks, pro se; Charles F. Lawrence, Esq., Office of the General Counsel, San Francisco, California, United States Department of Agriculture, for appellee.

OPINION BY ADMINISTRATIVE JUDGE RITVO

On September 25, 1973, Dwight Brooks located the Sweet Potato placer mining claim in T. 20 N., R. 10 E., M.D.M., California, on land withdrawn for power site purposes and within a national forest. ^{1/} As required by section 4 of the Mining Claims Rights Restoration Act of 1955, 69 Stat. 681, 30 U.S.C. § 623 (1970), Brooks filed a copy of the notice of location of the claim in the proper Bureau of Land Management (BLM) office. Numerous California State agencies, the Bureau of Sports Fisheries and Wildlife (BSF&W) and the Bureau of Reclamation, Department of the Interior, the Federal Power Commission, and the Forest Service, Department of Agriculture, were notified by the BLM of appellant's mining location and were asked to submit possible objections. On January 10, 1974, the Forest Service responded contending that placer mining operations would substantially interfere with other uses of the land within the claim. On January 11, 1974, the BSF&W informed the Forest Service that, upon request, a field inspection could be made to determine whether adverse effects would be likely to occur on fish and wildlife resources as a consequence of appellant's proposed mining activities. The remaining agencies either had no objections or did not respond.

On January 16, 1974, the BLM informed Brooks that, as prescribed by section 2 of the Act, 30 U.S.C. § 621(b) (1970), it would order a hearing to determine whether placer mining operations would substantially interfere with other uses of the land within the claim. The hearing would determine whether the Department should order:

- (1) a complete prohibition of placer mining;
- (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or
- (3) a general permission to engage in placer mining.

Administrative Law Judge Steiner held a hearing on June 27, 1974, to determine whether placer mining operations on Brook's

^{1/} Power Project Withdrawal No. 187 (April 17, 1924); Tahoe National Forest, Presidential Proclamation of September 17, 1906; 34 Stat. 3232.

claim would substantially interfere with other uses of the land. At the hearing, the parties submitted a written stipulation that read, in part,

[T]he U.S. Forest Service has explained to us what our rights would be even if placer mining should be prohibited on our mining claim * * *. In consequence, we agree that you [the Administrative Law Judge] may issue an order prohibiting placer mining in this area as we agree that unrestricted mining of this type would substantially interfere with other uses of the land included within the claim. We understand, however, that stream-bed suction dredging with less than a ten-inch intake will be allowed. (Ex. 1)

No other evidence was introduced at the hearing. Relying on the stipulation, the Administrative Law Judge issued a decision dated September 11, 1974, concluding that placer mining would substantially interfere with other uses of the land within the Sweet Potato placer mining claim and that placer mining would be prohibited by an appropriate order after his decision became final. This appeal followed.

Appellant asserts that subsequent to the hearing, but prior to receiving the decision, he did additional exploration work on the claim. He now contends that substantial amounts of minerals can be removed from the gravels in and alongside the stream without permanent damage to the stream bed in any way or impairing its use for other purposes. He states, "Based on what I know now, I therefore realize the stipulation was a mistake and request that I be relieved of it." Brooks requests a new hearing be held in order to obtain permission:

(a) To engage in placer mining subject to whatever reasonable conditions which the Forest Service may wish to impose in order to protect whatever other unspecified other uses they seek to protect and as to which it is felt that placer mining operations upon my lands would constitute an interference; or,

(b) To engage in general unlimited placer operations in the gravels in and adjacent to the stream bed. As the Forest Service is aware, these gravels are completely recharged and restored annually by the spring runoff.

Appellant has alleged facts which, if established at a new hearing, could permit the Administrative Law Judge to modify his proposed order to allow placer mining on the claim in accordance with the choices set out in the Act. However, we need not reach the issue of whether appellant's allegations alone are sufficient to permit a new hearing to be held, for we believe a new hearing is required for another reason. Examination of the record indicates that appellant was experiencing considerable confusion regarding the consequences of signing the stipulation. This confusion appears to be the basis for his failure to present evidence at the hearing on the essential issue of whether placer mining would substantially interfere with other uses of the land.

At the hearing the Forest Service rested its case with the submission of the stipulation and requested an order prohibiting all mining. 2/ The following colloquy then took place:

MR. LAWRENCE: With that letter in the record, the Forest Service will have no further evidence to produce.

THE JUDGE: Mr. Brooks, do you have any comments on counsel's statement?

MR. BROOKS: No, Your Honor, We are willing to go along with the letter.

THE JUDGE: Do you understand that the act and the regulations provide for the issuance of an order either to allow or prohibit placer mining operations and I would have no authority to issue an order which would be conditional in any way. Do you understand that?

MR. BROOKS: Yes, I see what you mean.

THE JUDGE: So that at this juncture, then, I would issue an order prohibiting placer mining operations on the claim.

MR. BROOKS: We don't want that. We definitely want to have it -- have placer mining such as dredging, and since there hasn't been a law determining whether it comes under placer mining or not.

THE JUDGE: Well, in that case you will just have to submit your evidence, counsel, unless Mr. Brooks wishes to agree that placer mining operations would interfere with other uses of the land. (Emphasis added.)

2/ The BSF&W was given notice of the hearing but neither appeared nor had any evidence submitted on its behalf.

(Tr. 5-6).

After further discussion on the possibility of a conditional stipulation, the record reads:

THE JUDGE: Do you have any other comments, Mr. Brooks?

MR. BROOKS: Your Honor, I would like to go along * * *. However, again, I don't know where placer mining and suction dredging would stop. I don't think it is clear to me whether I could be stopped. Our general purpose is just to mine the bottom of the river, and I do want to protect that and hold a valid claim for that purpose.

THE JUDGE: Well, we are here today to resolve only one issue, and that is whether or not placer mining should be allowed. We simply cannot set forth conditions.

MR. BROOKS: You can't approve one with a stipulation from me that it would not be aboveground -- be any placer mining aboveground?

MR. LAWRENCE: I wonder if we might go off the record a moment.

THE JUDGE: Off the record.

(Whereupon an off-the-record
discussion was conducted.)

THE JUDGE: On the record. Have you arrived at any agreement or stipulation, counsel?

MR. BROOKS: We will stipulate to the letter we have submitted and signed.

THE JUDGE: You're stipulating that an order may issue prohibiting placer mining claims -- strike that. Prohibiting placer mining in the area embraced by the claim?

MR. BROOKS: Correct.

THE JUDGE: Very well. (Emphasis added.)

(Tr. 8-9).

[1] It is clear from the record that appellant consented to the stipulation only because he was assured by counsel for the Forest Service that restricted placer mining activity would still be permissible, despite the stipulation. The stipulation must be read as a whole, United States v. Ideal Cement Co., 5 IBLA 235, 241, 79 I.D. 117, 121 (1972), suit pending, Ideal Basic Ind., Inc. v. Morton, Civil No. J-12-72, (D. Alas., filed September 26, 1972).

We note that in the same breath in which appellant stipulated that unrestricted mining would substantially interfere with other uses of the land -- a finding which compels prohibition of all forms of placer mining on the claim, United States v. Western Petroleum, Inc., 12 IBLA 328, 331 (1973) -- he also stated: "We understand, however, that steam-bed suction dredging with less than a ten-inch intake will be allowed."

Appellant's confusion in this case renders his consent to the stipulation ineffective. Cf. Allensmith v. Funke, 421 F.2d 1350, 1351 (6th Cir. 1970); Thomas v. Colorado Trust Deeds Funds, Inc., 336 F.2d 136, 139 (10th Cir. 1966); Swift & Co. v. United States, 276 U.S. 311, 324 (1927). Aside from the ineffective stipulation, no other evidence was submitted at the hearing. Thus we are left with no substantive basis for resolving whether placing mining operations would substantially interfere with other uses of the land within the claim.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is reversed and the case remanded for a full hearing on the merits. 3/

Martin Ritvo

Administrative Judge

I concur:

Anne P. Lewis
Administrative Judge

3/ Cf. United States v. McKenzie, 20 IBLA 38 (Supp. 1, 1975), remanding a case for a new hearing after a holding that an Administrative Law Judge has a duty to conduct a hearing in such a manner that all relevant facts in a mining contest will be adduced, and should take special care to do so where a party is without counsel and there is "confusion" concerning the status of purported tendered evidence.

ADMINISTRATIVE JUDGE THOMPSON DISSENTING:

I disagree with the finding of the majority and the ordering of a new hearing in the present posture of this case. This Board may order further hearings in its discretion where hearings have already been held to decide essential factual issues unresolved or where there is uncertainty in the evidence and the circumstances warrant the further hearing. See cases cited in United States v. Taylor, 19 IBLA 9, 82 I.D. __ (1975). If the majority bases its granting of the hearing upon this discretionary authority there seems little justification for doing so. ^{1/}

Another reason for ordering a second hearing where one has already been held goes to the validity of the first hearing itself and the findings and conclusions based upon that hearing. The claimant consented to an order of the Administrative Law Judge to prohibit placer mining upon the claim. This consent and admission of essential facts are set aside by the majority because they find the claimant was "confused."

The only clear manifestation that claimant may have been confused is reflected in his statement that he did not know where placer mining and suction dredging would stop (Tr. 8). This confusion involved his understanding of what the Forest Service would

^{1/} Two cases involving remands for further hearing also involved stipulations entered into by the parties. United States v. Ideal Cement Co., 5 IBLA 235, 79 I.D. 117 (1972), suit pending, Ideal Basic Ind., Inc. v. Morton, Civil No. J-12-72 (D. Alas., filed September 26, 1972), and United States v. U.S. Minerals Development Corp., 75 I.D. 127 (1968). In those cases the stipulations on certain facts and factual conclusions prevented the basic factual determination to be made and, therefore, further hearings were ordered to meet the Secretary's obligation to determine the validity of contested mining claims. The circumstances are different here. Appellant has not shown any equitable reasons why he failed to present evidence at the first hearing on the essential issue of mining interference with other uses of the land. He has failed to make an offer of proof that would show that mining operations would not substantially interfere with the other uses of the area. Both showings should be made to warrant ordering a further hearing in the exercise of the Board's discretion. Cf. United States v. Kottinger, 14 IBLA 10, 18 (1974); United State v. Gunn, 7 IBLA 237, 253, 79 I.D. 588, 595-96 (1972).

consider to be mining operations. Most of the discussion at the hearing concerned the authority of the Judge to issue an order permitting restrictive mining on the claim or conditioning mining activities on the claim. The record clearly establishes that the Judge told claimant he, the Judge, had no authority to enforce a stipulation permitting restrictive mining by issuing an order to that effect or allowing mining with certain conditions (e.g., Tr. 7). Counsel for the Forest Service agreed that the Judge had no such authority, but said the Forest Service did not intend to curtail Mr. Brooks' operations, which were not regarded as mining, although other operations might be considered mining (Tr. 8). The Forest Service's counsel asked for a discussion off the record. Thereafter, the Judge asked if the parties had arrived at any agreement or stipulation. Claimant answered that they would stipulate to the letter they had submitted and signed. This question and answer followed:

THE JUDGE: You're stipulating that an order may issue prohibiting placer mining claims -- strike that. Prohibiting placer mining in the area embraced by the claim?

MR. BROOKS: Correct.

Tr. 9.

There is no confusion by claimant manifest here. He was clearly informed previously of the Forest Service's position that mining operations would substantially interfere with other uses of the claim and he understood that the Judge would only issue an order prohibiting placer mining within the claim. Claimant has made no allegation on appeal that he was misled by the Forest Service, that his understanding was anything other than that an order would issue forbidding placer mining operations upon the claim, or anything else which would satisfactorily vitiate his consent to such an order or his admission that placer mining operations would interfere with other uses.

I do not believe we should order a further hearing based merely upon speculation as to the state of mind of the claimant at the hearing not clearly reflected in the record, nor upon a surmise as to representations by the Forest Service counsel made to appellant off the record, where appellant has not alleged any misrepresentation or breach of an understanding between the two parties. The hearing prescribed by section 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), has been satisfied here. Appellant was

given notice of the hearing and appeared at the hearing. The factual issue to be decided by such a hearing under that Act is whether placer mining operations would substantially interfere with other uses of the land in the claim. After the hearing this Department is to issue an order providing for a complete prohibition of placer mining, a general permission to engage in placer mining, or permission to engage in placer mining subject to a surface restoration stipulation. When the parties stipulated to the fact mining operations would substantially interfere with other uses of the land there were no other factual issues to be resolved.

Appellant has shown no reason warranting a further hearing in this case. He offers nothing on appeal which would vitiate his consent to an order prohibiting placer mining and nullifying his factual admission. Cf. Martin Marietta Corp. v. F.T.C., 376 F.2d 430 (7th Cir., 1967), cert. denied, 389 U.S. 923; Stanford v. Utley, 341 F.2d 265, 271 (9th Cir. 1965).

The gist of his reasons for a further hearing is set forth in his appeal as follows:

At the time of the hearing I was not fully aware of the mineral potential on the claim insofar as the placer aspects of it were concerned, not having fully explored the location and, hence I agreed to and entered into the stipulation referred to in your decision of September 11, 1974.

Since executing that stipulation and before receipt of your decision, I have completed my summer suction dredging operations and also had the opportunity to sample the gravel bars below my operations and now realize the potential for recovery of substantial amounts of mineral from the gravels in and alongside the stream without permanent damage to the streambed in any way or impairing its use for other purposes. Based on what I know now, I therefore realize the stipulation was a mistake and request that I be relieved of it.

* * * * *

Accordingly I petition the United States Department of the Interior to reopen my case and to schedule a rehearing upon the objections of the U.S. Forest Service earlier filed so that I may present my new information.

* * * * * 8 *

Since the discovery which I have described above came as the result of my summer's suction dredging operations, and after the hearings upon which your decision was and is based, I wish to obtain a rehearing of the matter and a reconsideration of your decision, particularly before it becomes final and an order issued which may prohibit all further placer mining operations upon my claim to my substantial detriment.

His "mistake" does not go to the issue of whether placer mining would substantially interfere with other uses of the land, but was to his own knowledge of the mineral potential of the claim at the time of the hearing. It is his new knowledge acquired after the hearing of the mineral potential of the claim which is his sole justification for being relieved of his "mistake." Suppose, instead of appellant's admission being made a part of the evidentiary record, he had denied the fact placer mining would substantially interfere with other uses of the land. Evidence was then presented on that issue by the Government. Appellant offered little or no evidence. On appeal he presents the same argument that he does before us now, namely, that since the hearing he has discovered greater mineral potential on the claim and therefore his mistake in failing to present any or better evidence on the issue should be relieved by our granting a new hearing. I suggest this Board would not relieve appellant of his "mistake" in those circumstances. I see little justification for doing so here. Certainly the fact appellant now believes there is greater mining potential on the claim than he believed at the time of the hearing has little relevance to the essential issue for which a hearing is held under the Act and is not a justifiable reason for ordering a new hearing in this case. It does not show that he was so "confused" in admitting that placer mining operations would substantially interfere with other uses of the claim that his consent to an order prohibiting placer mining and his admission of the fact of interference with other uses are negated.

This case is in no way comparable to United States v. McKenzie, 20 IBLA 38 (Supp. 1, 1975), where we pointed out that a Judge should conduct a hearing in such a way as to ensure that all relevant evidence is presented especially where a mining claimant was without counsel and there was confusion as to the status of evidence in the record. In that case, this Board in its discretion had ordered a further hearing based upon evidence tendered after a hearing which indicated the mining claimant might be able to show that he had made a discovery on his claim. The record clearly showed that he believed that tendered evidence was part of the evidentiary record and neither

the Government's counsel nor the Judge clarified the matter. The purpose of our ordering the further hearing was not met when the tendered evidence was not presented, although the claimant thought it was. The additional hearing would serve a useful and necessary purpose to clarify the status of the tendered evidence and the evidentiary basis for a final decision in the matter.

On the other hand, to order a further hearing for appellant is to conclude that his factual admission that placer mining will substantially interfere with other uses of the land has no consequence so that the original hearing is nullified. I disagree with this conclusion in these circumstances. At the very least, because appellant has alleged nothing more than his increased knowledge of the mineral potential since the original hearing, before setting aside that hearing, I would require appellant to come forward with a statement of his understanding of the effect of the stipulation to which he agreed at the hearing, and to make an additional showing beyond the reasons offered in his appeal to support and justify nullifying the proceedings below.

In sum, I do not believe the record establishes, nor that appellant has shown on appeal, sufficient basis for concluding that his consent to an order prohibiting placer mining and his factual admission that placer mining operations would substantially interfere with other uses of the claim vitiates the hearing proceeding below. Furthermore, I would not order another hearing in this case in the Board's discretion without a showing of equitable reasons justifying it and that a further hearing would serve a useful purpose. See footnote 1 and United States v. Laing, 3 IBLA 108 (1971).

Joan B. Thompson
Administrative Judge

